



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97183; File No. SR-CFE-2023-001]

Self-Regulatory Organizations; Cboe Futures Exchange, LLC; Notice of a Filing of a Proposed Rule Change to Update Regulatory Independence Policies

March 22, 2023.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on March 10, 2023 Cboe Futures Exchange, LLC (“CFE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also has filed this proposed rule change with the Commodity Futures Trading Commission (“CFTC”). CFE filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act (“CEA”)² on March 10, 2023.

I. Self-Regulatory Organization’s Description of the Proposed Rule Change

CFE is proposing to update CFE Policy and Procedure XIII (Cboe Global Markets, Inc. and Subsidiaries Regulatory Independence Policy for Regulatory Group Personnel) (“P&P XIII”) and CFE Policy and Procedure XIV (Cboe Global Markets, Inc. and Subsidiaries Regulatory Independence Policy for Non-Regulatory Group Personnel) (“P&P XIV”) (collectively, “Regulatory Independence Policies” or “Policies”) of the Policies and Procedures Section of the CFE Rulebook.

The scope of this filing is limited solely to the application of the proposed rule change to security futures that may be traded on CFE. Although no security futures are currently listed for trading on CFE, CFE may list security futures for trading in the future. The text of the proposed

¹ 15 U.S.C. 78s(b)(7).

² 7 U.S.C. 7a-2(c).

rule change is attached as Exhibit 4 to the filing but is not attached to the publication of this notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CFE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CFE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

CFE is a subsidiary of Cboe Global Markets, Inc. ("CGM"). CGM, CFE, and other U.S. trading venue subsidiaries of CGM previously adopted the Regulatory Independence Policies and make updates to the Regulatory Independence Policies from time to time. The Regulatory Independence Policies are incorporated into the Policies and Procedures Section of the CFE Rulebook in P&P XIII and P&P XIV.

The updates to the Regulatory Independence Policies being made by the proposed rule change include the following:

The titles of the Regulatory Independence Policies are proposed to be updated. The title of the Regulatory Independence Policy in P&P XIII is proposed to be Cboe Global Markets, Inc. and Subsidiaries Regulatory Independence Policy for Cboe U.S. Exchanges (Regulatory Group Personnel Version) and the title of the Regulatory Independence Policy in P&P XIV is proposed to be Cboe Global Markets, Inc. and Subsidiaries Regulatory Independence Policy for Cboe U.S. Exchanges (Non-Regulatory Group Personnel Version). The titles of the Regulatory Independence Policies are proposed to be updated in order to reflect that the Policies are applicable to Cboe U.S. Exchanges, as further described in the following paragraph.

Similarly, the provisions of the Regulatory Independence Policies are proposed to be revised to make clear that they apply to Cboe U.S. Exchanges. Cboe U.S. Exchanges under the Policies include Cboe Exchange, Inc., Cboe C2 Exchange, Inc., Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., CFE, Cboe Digital Exchange, LLC (“Cboe Digital”), and Cboe SEF, LLC (“Cboe SEF”). All of these trading venues are currently referenced in the Regulatory Independence Policies with the exception of Cboe Digital.

The Regulatory Independence Policies are proposed to be updated to apply to Cboe Digital. Cboe Digital is a designated contract market (“DCM”) registered with the CFTC that became a subsidiary of CGM during 2022.

Each Regulatory Independence Policy is proposed to be revised to specifically refer to the other Regulatory Independence Policy as a companion version of that Regulatory Independence Policy. This proposed change is intended (i) to make clear to anyone reviewing the Regulatory Independence Policy applicable to Regulatory Group personnel that there is a related Regulatory Independence Policy with similar provisions that applies to Non-Regulatory Group personnel and (ii) to make clear to anyone reviewing the Regulatory Independence Policy applicable to Non-Regulatory Group personnel that there is a related Regulatory Independence Policy with similar provisions that applies to Regulatory Group personnel.

The Regulatory Independence Policies are proposed to be revised to update the definition of the Regulatory Group under the Policies to refer to those employees supporting the regulatory functions of the Cboe U.S. Exchanges and to indicate that those employees include (i) all regulatory employees in the Regulatory Division for the Cboe U.S. Exchanges; (ii) any employee of any Cboe Company (as defined below) who is performing services for the Regulatory Group, including for example, when providing such services, Legal Division and Compliance Department employees as well as systems and database personnel who are assigned to work on matters for the Regulatory Group; and (iii) employees of a regulatory services provider providing

regulatory services for a Cboe U.S. Exchange pursuant to any Regulatory Services Agreement (“RSA”). All other employees of any Cboe Company are considered non-Regulatory Group Personnel under the Policies.

The Regulatory Independence Policies are proposed to be revised to add references to Cboe Digital where appropriate and to note regulatory provisions that CFE, Cboe Digital, and Cboe SEF are required to enforce and how those obligations apply to each of those entities. As proposed to be revised in this respect, the Regulatory Independence Policies would provide that: Under the CEA, CFE, Cboe Digital, and Cboe SEF are required to enforce compliance by their trading privilege holders and participants and their related parties with the CEA, the regulations of the CFTC, and, to the extent applicable, that exchange’s rules, certain rules of the Federal Reserve Board (for CFE), certain rules of The Options Clearing Corporation (for CFE) or Cboe Clear Digital, LLC (for Cboe Digital), and the Act, and rules and regulations promulgated pursuant to the SEA (for CFE). These proposed additions of references to Cboe Digital in the Regulatory Independence Policies do not substantively change the descriptions in the Policies of the regulatory provisions that CFE is required to enforce and how those obligations apply to CFE.

The Regulatory Independence Policies are proposed to be updated to define the term Member under the Policies to encompass a trading permit holder, trading privilege holder, permit holder, member, participant, or other person or entity with trading privileges on a market of a Cboe U.S. Exchange. The Regulatory Independence Policies are also proposed to be revised to utilize the term Member in place of the term trading permit holder since the term Member is a broader term and captures the various types of members on the Cboe U.S. Exchanges.

The Regulatory Independence Policies are proposed to be revised to specifically note that the Cboe U.S. Exchanges may enter into RSAs with regulatory service providers.

The Regulatory Independence Policies are proposed to be amended to reference the Cboe U.S. Exchanges in various provisions within the Policies instead referencing a Cboe Company in

instances in which the applicable provision is intended to refer more specifically to the Cboe U.S. Exchanges instead of to the broader term Cboe Company. A Cboe Company includes CGM, the Cboe U.S. Exchanges, and any other subsidiary or affiliate of CGM. The proposed rule change also includes other proposed revisions which reference both the Cboe U.S. Exchanges and any other Cboe Company where the applicable provision is meant to apply to both. These proposed amendments are proposed clarifying changes and are not intended to alter the current substantive provisions of the Regulatory Independence Policies. Instead, they are intended to use more precise terminology and to further clarify which entities various provisions are intended to reference. For example, one of these provisions currently reads: All regulatory decisions shall be made without regard to the actual or perceived business interests of the Cboe Companies or any of their trading permit holders. As it is proposed to be revised, this provision would read: All regulatory decisions shall be made without regard to the actual or perceived business interests of the Cboe U.S. Exchanges and any other Cboe Companies or any of the Cboe U.S. Exchange Members.

The Regulatory Independence Policies are proposed to be revised to make clear that regulatory matters under the Policies include, among other things, any regulatory investigation, examination, inquiry, or complaint that is being investigated or brought by the CFTC.

The Regulatory Independence Policies are proposed to be updated to refer to the Regulatory Oversight Committees of the Cboe U.S. Exchanges instead of to Regulatory Oversight and Compliance Committees, which was a name for those committees that was previously used by some of the Cboe U.S. Exchanges.

The Regulatory Independence Policies are proposed to be amended to provide that regulatory matters may be discussed with the CGM Risk Committee in connection with its oversight of CGM's risk assessment and risk management, including risks related to Cboe U.S. Exchanges' compliance with applicable laws, regulations, and policies. Similarly, the Regulatory Independence Policies are proposed to be amended to provide that the Chief

Regulatory Officer of the applicable Cboe U.S. Exchange will have direct access to the CGM Risk Committee Chair to discuss matters related to oversight of CGM’s risk assessment and risk management, including risks related to Cboe U.S. Exchanges’ compliance with applicable laws, regulations, and policies. Similar provisions currently apply with respect to the CGM Board and CGM Audit Committee and references to the CGM Risk Committee and CGM Risk Committee Chair are proposed to be added to the Policies in this regard in light of the role of the CGM Risk Committee with regard to risk assessment and risk management.

The Regulatory Independence Policies are also proposed to be updated to include various non-substantive and technical revisions which do not affect the content and substance of the Policies. For example, the Securities Exchange Act of 1934 is currently referred to in the Regulatory Independence Policies as the Securities and Exchange Act of 1934 and is currently defined in short form in the Policies as the “Act”. The Regulatory Independence Policies are proposed to be revised to correct the references to that statute by removing the word “and” from within the current references to the full name of that statute and by also changing the defined term for that statute within the Policies from the “Act” to the “SEA”. As another example, bullet point lists within the Regulatory Independence Policies are proposed to be revised so that each bullet point within the lists starts with a lower case word instead of a capitalized word.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,³ in general, and furthers the objectives of Sections 6(b)(1)⁴ and 6(b)(5)⁵ in particular, in that it is designed:

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(1).

⁵ 15 U.S.C. 78f(b)(5).

- to enable the Exchange to enforce compliance by its Trading Privilege Holders and persons associated with its Trading Privilege Holders with the provisions of the rules of the Exchange,
- to prevent fraudulent and manipulative acts and practices,
- to promote just and equitable principles of trade,
- to remove impediments to and perfect the mechanism of a free and open market and a national market system,
- and in general, to protect investors and the public interest.

The proposed rule change retains the current substantive provisions of the Regulatory Independence Policies within CFE's rules while updating the Policies to clarify that they apply to the Cboe U.S. Exchanges, which now includes Cboe Digital, and to make clarifying updates to titles, terms, definitions, and provisions within the Policies where appropriate and necessary. By retaining the current substantive provisions of the Regulatory Independence Policies within CFE's rules, the proposed rule change contributes to minimizing conflicts of interest in the decision-making process of CFE and to the preservation of the independence of the Exchange's Regulatory Group as it performs regulatory functions for the Exchange. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory in that the Regulatory Independence Policies apply equally in relation to all CFE Trading Privilege Holders.

B. Self-Regulatory Organization's Statement on Burden on Competition

CFE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, in that the proposed rule change contributes to CFE's ability to carry out its responsibilities as a self-regulatory organization. The Exchange believes that the proposed rule change will not impose any undue burden on competition because the Regulatory Independence Policies apply equally in relation to all CFE Trading Privilege Holders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will become operative on March 24, 2023. At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.⁶

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CFE-2023-001 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CFE-2023-001. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

⁶ 15 U.S.C. 78s(b)(1).

proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CFE-2023-001, and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Sherry R. Haywood,

Assistant Secretary.

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⁷ 17 CFR 200.30-3(a)(73).